

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Case No. 08-12606 (BLS)
)
VERASUN ENERGY CORPORATION, et al.,) Chapter 11
)
Debtors.¹) Jointly Administered
)

AMENDED AFFIDAVIT OF SERVICE

STATE OF NORTH DAKOTA)
)ss
COUNTY OF BURLEIGH)

John Hamre deposes and says that:

he is over the age of 18 years and not a party to this action and, on the **27th day of March, 2009**, he deposited in the United States Mail, Bismarck, North Dakota, **four envelopes** with postage fully prepaid, securely sealed and each containing a photocopy of:

1. Motion for Relief From Stay.
2. Notice of Motion and Notice of Opportunity for Hearing on Motion for Relief From Stay.
3. Proposed Order Granting Relief From Stay.
4. Notice of Appearance and Request for Service of Papers (separately filed).

The envelopes were addressed as follows:

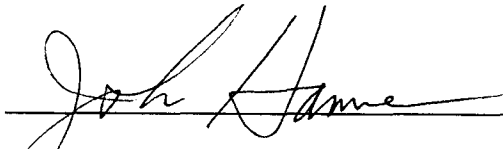
Peter Krebs
Debtors' Counsel
Skadden Arps Slate Meagher & Flom
333 West Wacker Drive
Chicago, IL 60606


Mark S. Chehi
Davis Wright
Megan Cleghorn
Debtors' Counsel
Skadden Arps Slate Meagher & Flom
One Rodney Square
PO Box 636
Wilmington, DE 19801

Office of the US Trustee
Mark Kenney
844 King Street Suite 220
Lockbox 35
Wilmington, DE 19801

Counsel for Indenture Trustee for
Unsecured Notes
Kelley Drye & Warren LLP
David E Retter & Jason R Adams
101 Park Avenue
New York NY 10178

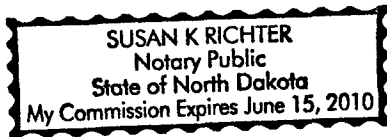
Subscribed and sworn to before me
this 27th day of March, 2009.





Notary Public

SEAL



¹ The Debtors consist of: VeraSun Energy Corporation (EIN: 20-3430241); ASA Albion, LLC (EIN: 55-0907221); ASA Bloomingburg, LLC (EIN: 55-0907224); ASA Linden, LLC (EIN: 55-0907228); ASA OpCo Holdings, LLC (EIN: 68-0609122); US Bio Marion, LLC (EIN: 20-34377343); US BioEnergy Corporation (EIN: 20-1811472); VeraSun Albert City, LLC (EIN: 20-2264707); VeraSun Aurora Corporation (EIN: 40-0462174); VeraSun BioDiesel, LLC (EIN: 20-3790860); VeraSun Central City, LLC (EIN: 55-0816855); VeraSun Charles City, LLC (EIN: 20-3735184); VeraSun Dyersville, LLC (20-5765890); VeraSun Fort Dodge, LLC (EIN: 42-1630527); VeraSun Granite City, LLC (EIN: 20-5909621); VeraSun Hankinson, LLC (90-0287129); VeraSun Hartley, LLC (EIN: 20-5381200); VeraSun Janesville, LLC (EIN: 20-4420290); VeraSun Litchfield, LLC (EIN: 20-8621370); VeraSun Marketing, LLC (EIN: 20-3693800); VeraSun Ord, LLC (75-3204878); VeraSun Reynolds, LLC (EIN: 20-5914827); VeraSun Tilton, LLC (EIN: 26-1539139); VeraSun Welcome, LLC (EIN: 20-4115888); VeraSun Woodbury, LLC (20-0647425).

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MOTION FOR RELIEF FROM STAY

The North Dakota Public Service Commission moves this Court for Relief from the automatic stay. The grounds supporting this motion are as follows:

1. On October 21, 2008 (the Petition Date), VeraSun Energy Corporation and 24 of its subsidiaries and affiliates (collectively, the Debtors), each filed a Petition for Reorganization under Chapter 11 of the United States Bankruptcy Code for the District of Delaware (the Bankruptcy Court). On November 3, 2008, this Court entered an order directing the joint administration of the Debtors' Chapter 11 Cases. Prior to filing its petition, VeraSun Hankinson, LLC (90-0287129), a subsidiary or affiliate of the Debtors operated as a licensed public grain warehouse in North Dakota under Chapter 60-02 of the North Dakota Century Code.

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2. By the provisions of 11 U.S.C. § 362, the commencement of actions or proceedings against the Debtors, with certain limited exceptions, are stayed.
3. VeraSun Hankinson, LLC furnished one grain elevator warehouse bond running to the State of North Dakota and executed by Liberty Mutual Insurance Company as surety, to the North Dakota Public Service Commission for the purpose of securing a license to operate as a public grain warehouseman in North Dakota. The penal sum of the bond is \$380,000.00.
4. Section 60-02-09 of the North Dakota Century Code provides that a public warehouseman's bond shall be conditioned 1) for the faithful performance of the licensee's duties as a public warehouse, 2) for compliance with the provisions of law and the rules of the commission relating to the storage and purchase of grain, and 3) for the specific purpose of protecting the holders of outstanding receipts from loss or damage by reason of violation of Chapter 60-04 and covering the costs incurred by the commission in the administration of Chapter 60-04 in the event of the licensee's insolvency.
5. The Debtor (VeraSun Hankinson, LLC) purchased grain, as defined in North Dakota Century Code Section 60-02-01(3) from producers and has failed to pay producers in full for the grain that was purchased.
6. There appears to be adequate bond coverage for persons who suffered loss or damage by reason of the Debtors' failure to faithfully perform its duties as a public grain warehouseman and comply with the provisions of the laws and rules relating to the purchase of grain in an insolvency proceeding.

7. Section 60-04-03 of the North Dakota Century Code, provides for the appointment of the Public Service Commission by the District Court, Southeast Judicial District, Wahpeton, North Dakota to act as trustee for the benefit of persons who suffer loss or damage by reason of a public grain warehouseman's failure to faithfully perform its duties as a grain buyer and comply with the provisions of the laws and rules relating to the purchase of grain in North Dakota. As trustee, the Public Service Commission is authorized to bring an action against the surety on the grain warehouseman's bond for loss or damages occurring by reason of the public grain warehouseman's failure to fulfill the conditions of the bond.

8. Recovery of proceeds by the Public Service Commission from the surety on the public grain warehouseman's bond on behalf of persons who suffered loss or damage by reason of Debtors' failure to faithfully perform its duties as a public grain warehouseman buyer and comply with the provisions of the laws and rules relating to the purchase of grain are believed to be sufficient to provide full protection to potential complaints as well as cover the costs incurred by the Public Service Commission in the administration of the licensee's insolvency.

9. The Public Service Commission's appointment as trustee under North Dakota law by the state District Court, Southeast Judicial District and the Commission's action against the surety on the public grain warehouseman's bond will not hinder, burden, delay, or be inconsistent with this proceeding.

10. Surety bonds given to secure a license from the State are not property of the estate because the debtor has no property interest in the bonds; rather, they are

essentially third-party beneficiary contracts. In the Matter of Buna Painting and Drywall Co., Inc., 503 F2d 618 (9th Cir. 1974).

11. Relief from the automatic stay for cause under 11 U.S.C. § 362(d) is warranted because the bond is payable only to the State of North Dakota and only for the protection of persons who sold grain to the Debtor. The bond is not necessary to an effective reorganization.

WHEREFORE, the Public Service Commission respectfully requests that this Court enter an Order terminating or modifying the stay afforded by 11 U.S.C. § 362 to permit the Public Service Commission to commence an action in state District Court, Southeast Judicial District against VeraSun Hankinson, LLC to secure the Commission's appointment as trustee for the benefit of persons who suffered loss or damage by reason of the Debtor's failure to faithfully perform its duties as a public grain warehouseman and comply with the provisions of the laws and rules relating to the purchase of grain, and to take all actions in accordance with North Dakota law including maintaining an action against the surety on the public grain warehouseman's bond furnished by VeraSun Hankinson, LLC.

Dated this 27th day of March, 2009.



Illona A. Jeffcoat-Sacco (ID#03315)
Annette Bendish (ID#05790)
Special Assistant Attorneys General
State Capitol – 12th Floor
600 E Boulevard Ave – Dept 408
Bismarck, North Dakota 58505-0480
701-328-2400

Attorneys for the Public Service Commission

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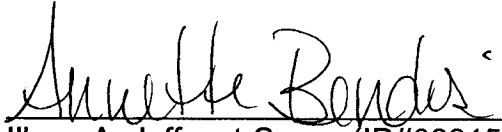
**NOTICE OF MOTION AND NOTICE OF OPPORTUNITY FOR
HEARING ON MOTION FOR RELIEF FROM STAY**

A Motion for Relief from Stay has been filed by the North Dakota Public Service Commission. YOU ARE HEREBY NOTIFIED that unless you or another party in interest files an objection in writing to the relief requested in the motion within fifteen (15) days from the date of the mailing of this notice, the Court may thereafter and without further notice enter an order granting the relief requested in the motion.

YOU ARE ALSO NOTIFIED that, if an objection in writing is timely filed, any party in interest may obtain a hearing on the objection. Written objections must be filed with both the Office of the Clerk of the Bankruptcy Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 and the undersigned.

¹ The Debtors consist of: VeraSun Energy Corporation (EIN: 20-3430241); ASA Albion, LLC (EIN: 55-0907221); ASA Bloomingburg, LLC (EIN: 55-0907224); ASA Linden, LLC (EIN: 55-0907228); ASA OpCo Holdings, LLC (EIN: 68-0609122); US Bio Marion, LLC (EIN: 20-34377343); US BioEnergy Corporation (EIN: 20-1811472); VeraSun Albert City, LLC (EIN: 20-2264707); VeraSun Aurora Corporation (EIN: 40-0462174); VeraSun BioDiesel, LLC (EIN: 20-3790860); VeraSun Central City, LLC (EIN: 55-0816855); VeraSun Charles City, LLC (EIN: 20-3735184); VeraSun Dyersville, LLC (20-5765890); VeraSun Fort Dodge, LLC (EIN: 42-1630527); VeraSun Granite City, LLC (EIN: 20-5909621); VeraSun Hankinson, LLC (90-0287129); VeraSun Hartley, LLC (EIN: 20-5381200); VeraSun Janesville, LLC (EIN: 20-4420290); VeraSun Litchfield, LLC (EIN: 20-8621370); VeraSun Marketing, LLC (EIN: 20-3693800); VeraSun Ord, LLC (75-3204878); VeraSun Reynolds, LLC (EIN: 20-5914827); VeraSun Tilton, LLC (EIN: 26-1539139); VeraSun Welcome, LLC (EIN: 20-4115888); VeraSun Woodbury, LLC (20-0647425).

Bismarck, North Dakota, this 27th day of March, 2009.

A handwritten signature in cursive script that reads "Annette Bendish". The signature is written in black ink and is positioned above a horizontal line.

Illona A. Jeffcoat-Sacco (ID#03315)

Annette Bendish (ID#05790)

Special Assistant Attorneys General

State Capitol – 12th Floor

600 E Boulevard Ave – Dept 408

Bismarck, North Dakota 58505-0480

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ORDER GRANTING MOTION FOR RELIEF FROM STAY

This matter comes before the Court upon the North Dakota Public Service Commission's Motion for Relief from the Automatic Stay. The Court has been advised and being otherwise fully informed in the premises does hereby find as follows:

1. On March 12, 2009, the North Dakota Public Service Commission received a claim against VeraSun Hankinson, LLC's (the Debtors) \$380,000 grain elevator warehouse bond for failing to pay the producer in full for the grain that was purchased by the Debtors.
2. Cause exists under 11 U.S.C. § 362(d) to lift the automatic stay and permit the North Dakota Public Service Commission to commence an action in state District Court, Southeast Judicial District against the Debtors to secure the North Dakota Public

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Service Commission's appointment as trustee against the surety on the public grain warehouseman's bond furnished by VeraSun Hankinson, LLC.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the North Dakota Public Service Commission shall be granted relief from the automatic stay to allow it to commence an action in state District Court, Southeast Judicial District to secure the appointment as trustee, on the condition that recovery against the Debtors be limited to any public grain warehouseman's bond proceeds covering such claims.

Dated this _____ day of _____, 2009.

BY THE COURT:

Honorable Brendan L. Shannon
United States Bankruptcy Court Judge

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**NOTICE OF APPEARANCE AND
REQUEST FOR SERVICE OF PAPERS**

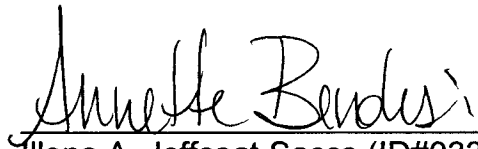
PLEASE TAKE NOTICE that, pursuant to Rule 9010(b) of the Federal Rules of Bankruptcy Procedure, Illona A. Jeffcoat-Sacco and Annette Bendish, Special Assistant Attorneys General for the State of North Dakota, hereby enter their appearance as attorneys for the North Dakota Public Service Commission in the above proceeding, and under Rule 2002 of the Federal Rules of Bankruptcy Procedure, request that their name be added to the mailing list maintained by the Clerk in the above case and that all notices given or required to be given in this case and all papers served or required to be served in this case be given to and served upon:

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Illona A. Jeffcoat-Sacco & Annette Bendish
Special Assistant Attorneys General
Public Service Commission
State Capitol – 12th Floor
600 E Boulevard Ave – Dept 408
Bismarck, ND 58505-0408

The foregoing request includes, without limitation, notices of any orders, pleadings, motions, applications, complaints, demands, hearings, requests or petitions, disclosure statements, answering or reply papers, memoranda and briefs in support of any of the foregoing and any other document brought before this Court with respect to these proceedings, whether formal or informal, whether written or oral, and whether transmitted or conveyed by mail, e-mail, delivery, telephone, telegraph, telex or otherwise.

Dated this 27th day of March, 2009.


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Annette Bendish (ID#05790)
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